

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0330P

Use Tax

Calendar Years 1998, 1999, and 2000

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer has manufacturing plants in Indiana, out of state, and out of country and is a wholly owned subsidiary of a European international industrial group. Taxpayer was previously audited for 1993 and 1994. At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items, some of which are similar to those assessed in a prior audit. The audit allowed credit for sales tax paid on non-taxable items at point of purchase. Items assessed tax include fixed assets, software, office supplies, aircraft parts, computer parts and equipment, posters, calendars, service awards, maintenance agreements, and miscellaneous items.

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DISCUSSION

Taxpayer protests the penalty assessed and itemizes some of the items with an explanation why the tax was not paid. Taxpayer further states there was no willful intent to evade or delay payment of the tax and the audit report verifies that it made every effort to assess tax correctly since there were several overpayments of tax as well as underpayments.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations.

Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer was previously audited with primarily the same issues. The prior audit assessed \$19,000 in tax while the current audit assessed \$109,814. Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.